

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

RED BARN MOTORS, INC.,
PLATINUM MOTORS, INC.,
MATTINGLY AUTO SALES, INC.,
YOUNG EXECUTIVE MANAGEMENT &
CONSULTING SERVICES, INC.,
Individually, and on behalf
of other members of the
general public similarly
situated,

Plaintiffs,

Docket No.

1:14-cv-01589-TWP-DKL

vs.

COX ENTERPRISES, INC.,
COX AUTOMOTIVE, INC.,
NEXTGEAR CAPITAL, INC. f/k/a
DEALER SERVICES CORPORATION,
successor by merger with
Manheim Automotive Financial
Services, Inc., and JOHN WICK,
Defendants.

Class Action

The deposition upon oral examination of
ADAM GALEMA, a witness produced and sworn before me,
Paula A. Morgan, Notary Public in and for the County
of Hamilton, State of Indiana, taken on the 10th day
of November, 2016, in the offices of Bose, McKinney &
Evans, 111 Monument Circle, Suite 2700, Indianapolis,
Marion County, Indiana, pursuant to the Federal Rules
of Civil Procedure. This deposition was taken on
behalf of the Plaintiffs in the above-captioned
matter.

ASSOCIATED REPORTING, INC.
251 East Ohio Street, Suite 940
Indianapolis, Indiana 46204
(317) 631-0940
www.associated-reporting.com

1 guess, or publicly traded-type financial instruments?

2 A Not publicly traded, no.

3 Q Privately traded?

4 A Yeah.

5 Q Is that the same now as well, too?

6 A Yes.

7 Q Okay. So various companies and individuals would be
8 able to buy a debt package?

9 A It's a 144A transaction, so only investment companies
10 can participate.

11 Q I'm going to turn to the affidavit that you at least
12 signed in this case. Are you familiar with this
13 document?

14 MR. VINK: Are you going to mark this as an
15 exhibit?

16 MR. AIREY: I wasn't going to.

17 MR. VINK: Okay.

18 A Yes, I'm familiar.

19 Q Okay. How did this document come about? Why were
20 you asked to draft this document?

21 A I was asked to --

22 MR. VINK: Before you answer that question, make
23 sure that you don't divulge anything that was
24 communicated to you by counsel related to signing
25 this declaration. That would be protected by the

1 attorney-client privilege.

2 Q Right. And I should have said that before. I don't
3 want to know anything that they asked you. And if
4 that's the only reason that you have for why you did
5 it, which wouldn't be surprising, then, you know,
6 that will be your response. I understand that.

7 A Well, are you asking why I'm here or why I signed
8 this?

9 Q How about this. Do you know why you were chosen to
10 draft this affidavit?

11 A Yes.

12 Q Okay. Why is that?

13 A Because I have knowledge of how floorplanning works
14 and how the system operates and how we calculate the
15 revenue that we generate.

16 Q But as far as the individual dealers that are
17 mentioned in this affidavit, like Red Barn and
18 Platinum and Mattingly, did you know about those
19 prior to drafting this affidavit?

20 A Yes, I've heard of them.

21 Q Did you have any interaction with or any -- I guess
22 "interaction" is the best word. Did you have any
23 interaction with their accounts for Red Barn,
24 Mattingly, or Platinum when you were in any of your
25 various positions with DSC?

1 A Direct interaction, no.

2 Q How about indirect?

3 A Sure.

4 Q What would that be?

5 A It would have been part of the analysis that we do on
6 dealers who default and charge off.

7 Q But you wouldn't have called up someone at Red Barn
8 and said, hey, what's going on here, why are you
9 defaulting, correct?

10 A Correct.

11 Q And same with Mattingly or Platinum?

12 A Correct.

13 Q So you may have interaction with their account here
14 in Indiana but not actually with any of these
15 dealers, specifically with themselves, or with those
16 dealers?

17 A I would not communicate directly with the dealer, no.

18 Q Now, did you actually physically write every word in
19 this affidavit?

20 A No.

21 Q Okay. Who did?

22 A It's my understanding our legal team.

23 Q As far as the exhibits that are attached to this
24 affidavit, did you pick which exhibits to put on this
25 affidavit?

1 A No.

2 Q I'm going to hand you what was marked as Exhibit B to
3 your affidavit. This document has "NextGear Capital"
4 written on the top of it.

5 A Correct.

6 Q Correct? So it's fair to say that this would have
7 been produced after the merger between DSC and
8 Manheim and -- with Cox, correct?

9 A Correct.

10 Q Do you know if this document was produced
11 specifically for this litigation?

12 A Yes.

13 Q It was specifically --

14 A It was.

15 Q Okay. Did you create this Exhibit B?

16 A I did not.

17 Q Do you know who did?

18 A Yes.

19 Q Who?

20 A Our technology team.

21 Q Did you supervise them when they created it?

22 A I do not have direct supervision of them.

23 Q So you didn't ask them to create this document?

24 A Myself directly? No.

25 Q Did you have any input in the information that was

1 put in this document?

2 A Yes.

3 Q Okay. So it's fair to say that you asked them to
4 create a document with these columns on it?

5 A I did not ask them, but I was involved in reviewing
6 and testing the accuracy.

7 Q Other than your counsel, who else assisted you in
8 producing Exhibit B?

9 A I can't recall exactly who was involved in the
10 development of it. The only other person I can think
11 of is a gentleman, Lucas Hancock.

12 Q Is he an IT person?

13 A No.

14 Q What does he do?

15 A He's senior director of customer experience.

16 Q Do you know what he does in that role?

17 A Yeah. He manages our call center.

18 Q Now, prior to the Manheim and DSC merger, had you
19 ever reviewed Manheim Financial Services' promissory
20 notes?

21 A No.

22 Q How about any Manheim documents, like security
23 agreements, financial agreements?

24 A No. We are competitors.

25 Q So it's fair to say that the first time you would

1 have reviewed those documents would have been in
2 drafting this affidavit?

3 MR. VINK: Object to the form. You can answer.

4 Q Well, let me ask it another way. When was the first
5 time that you reviewed any documents from Manheim
6 Financial Services, which I'll call MAFS for short.

7 A Sure. In this case. I mean, we did not have any
8 involvement in MAFS documents.

9 Q Even after the merger you didn't go and look and see
10 what they were doing versus what DSC was doing?

11 A I did not review a particular legal document of MAFS
12 and compare it to what DSC was doing.

13 Q Have you done that comparison for this litigation?

14 A Have I done that?

15 Q Correct.

16 A I am not an attorney, so I've not reviewed and, you
17 know, compared every single -- I have not done that.

18 Q Okay. So you didn't go through and say what was
19 different between a MAFS document and a NextGear or
20 DSC document?

21 A No.

22 Q You said that right now NextGear has about 21,000
23 dealers?

24 A Correct.

25 Q Do you know, on a year-by-year basis, approximately

1 how many dealers DCS would have had -- I'm sorry, DSC
2 would have had in, let's say, 2007?

3 A I can't recall exactly. If I had to estimate, it
4 would be six to eight thousand.

5 Q How about in 2005? Would you know then?

6 A That was the first year of DSC, so --

7 Q Okay. How about 2008?

8 A Roughly the same, six to eight thousand.

9 Q And would that be the same up until the merger?

10 A Correct.

11 Q Okay. So with the merger you took on all of -- or
12 NextGear was created to take on all of MAFS customers
13 as well as DSC customers under one company?

14 A Correct.

15 Q And so did MAFS have more customers than DSC?

16 A I believe they did, yes.

17 Q You said six to eight thousand customers per year.
18 Are they the same six to eight thousand customers
19 every year?

20 A No.

21 Q What's the turnover rate of customers that would
22 maybe use the floorplan in 2007 versus 2008?

23 A I can't speak specifically to the turnover rate back
24 then. As an estimate, we could potentially turn
25 over, back then, maybe a hundred accounts each month.

1 Q When you say "turn over," what do you mean by that?

2 A They could leave our relationship voluntarily. They
3 can move to another financier, another lender. They
4 could also default on their account and be charged
5 off.

6 Q Do you know what the default rate would have been in
7 2007?

8 A I don't know exactly. You know, it's going to be
9 somewhere around 5 percent of our dealers.

10 Q Is that per year or per month?

11 A It's an annual list.

12 Q Did that number stay true throughout 2008, 2009,
13 2010?

14 A I can't speak to that. I don't have, obviously, the
15 information in front of me. But it would not have
16 varied significantly other than -- you know, during
17 '08, '09, with the economic downturn, we did
18 experience larger losses.

19 Q So maybe more than 5 percent in '08, '09?

20 A Sure. I think you would find that everywhere.

21 Q With the six to eight thousand customers that DSC
22 would have had, did those customers also use MAFS as
23 well?

24 A Some of them could.

25 Q Do you know, was it common in the industry to have

1 A Yeah, I would have no reason to believe it would not
2 be.

3 Q Now, on -- let's see. It's the second page of the
4 document, first page of the promissory note. Under
5 1(a) there's a definition of "advance." Is that the
6 definition that you were discussing earlier when you
7 talked about loans?

8 A Correct.

9 Q Could you read that for me?

10 A "'Advance' shall mean all loans or payments pursuant
11 to this Note made by DSC to Dealer or on Dealer's
12 behalf to any third party."

13 Q In your affidavit, on page 2, paragraph 15, that
14 paragraph generally states what you told me earlier,
15 that when NextGear pays an auction direct -- or,
16 sorry.

17 That the date NextGear conveys funds for a
18 vehicle varies by transaction type and source,
19 correct? First paragraph of that statement.

20 A Yeah, that statement is true.

21 Q Okay. It's also true that for the auction
22 vehicles -- for dealers that buy cars at auction,
23 NextGear charges interest to the dealer on the day
24 that the dealer purchases the car from the auction,
25 correct?

1 A Generally, yes.

2 Q You said "generally." When would they not?

3 A It could be, you know, if a dealer buys a car at
4 auction and then three months later floorplans it
5 with us, we're not going to backdate interest to the
6 date that it was sold or purchased.

7 Q I'm sorry. Could you explain that example a little
8 bit more?

9 A Sure. I mean, a dealer buys a car, and he could pay
10 with cash.

11 Q Okay.

12 A And then two, three, four months later he might
13 choose to put it on his floorplan to free up that
14 cash.

15 Q So if a dealer buys a car at auction using the
16 NextGear or DSC floorplan, then, at that time, the
17 date that the dealer purchases that vehicle is the
18 date that interest begins to run?

19 A Correct.

20 Q Are you aware of anywhere in the contract where it
21 makes a distinction between vehicles that are bought
22 at an auction and vehicles that are bought at -- or
23 vehicles that are owned by the dealer?

24 MR. VINK: Object to the form. You can answer.

25 A I don't know.

1 Q With the -- let's see. It's Exhibit B to your
2 affidavit that I handed you. I think I gave it to
3 you earlier.

4 A Yes. Sorry.

5 Q Okay. In the far left column there's -- -- on the
6 first page, about halfway down, it says "Total for"?

7 A Correct.

8 Q Do you know what that "Total for" means?

9 A That is the total of the transactions that were
10 funded on that particular date.

11 Q So that's the day that NextGear funded the
12 transaction to the auction or buyer in this case?

13 A It is the date that NextGear sent cash to the
14 auction.

15 Q Now, the day that NextGear sends cash to the auction
16 is, in many cases, days and even weeks later than the
17 actual day that the dealer buys from the auction,
18 correct?

19 A Sure.

20 Q And in some instances a dealer can purchase the
21 vehicle at auction, sell that vehicle, send funds to
22 NextGear before NextGear actually pays the auction as
23 well, correct?

24 A That is possible.

25 Q In the affidavit you indicate that there's a dealer

1 that has a \$40 million line of credit with NextGear?

2 A Yes.

3 Q Who is that?

4 A We have -- I don't know who exactly has the \$40
5 million line of credit. That's just a range given.

6 Q That's just something you looked on a computer system
7 somewhere to see what the max range was, without
8 actually knowing who it was?

9 A Yeah. I mean, it's all information within our
10 system.

11 Q How many dealers have a \$40 million line of credit,
12 do you know?

13 A We only have a couple that are in that -- at that
14 level.

15 Q Do you know what the average credit limit, credit
16 line is for a dealer?

17 A Yeah. The mathematical average is approximately
18 \$300,000 today.

19 Q Has that gone up or down in the years since you've
20 been working at NextGear?

21 A It has increased.

22 Q You don't know what the dealers' names are that have
23 a \$40 million line of credit?

24 MR. VINK: Object to form. You can answer.

25 A I mean, I can give you a couple of names of our

1 largest accounts.

2 Q Yeah.

3 A I don't know that they're exactly \$40 million.

4 Q Okay.

5 A Hertz Corporation, Wholesale, Inc. Those would be
6 probably two of our bigger ones.

7 Q Does NextGear do any business with, like, the
8 Enterprise rental car?

9 A No.

10 Q Do you know what Hertz uses its line for?

11 A It's my understanding it's for their car sales
12 division. It's a very short time frame that they're
13 on floorplan.

14 Q Do you know how many dealers would have been doing
15 business with NextGear from 2005 through 2012 but
16 would not have been doing business in 2013?

17 A I could provide a guess. If you -- complete estimate
18 here, but dealers who may have been terminated,
19 right? Is that what you're getting at, dealers
20 who --

21 Q Who no longer do business with DSC, for whatever
22 reason. I know you said there was about a 5 percent
23 turnover earlier.

24 A Yeah. It could be -- again, I don't have the
25 information in front of me. But a pure guess for

1 that time frame might be, I don't know, four to five
2 thousand dealers. Pure guess.

3 Q That's something you could find out through the
4 system, though?

5 A Yeah.

6 Q And NextGear would have a record of the relationship
7 between a particular dealer and NextGear/DSC for each
8 transaction that that dealer has done with NextGear
9 or DSC?

10 A Correct. We have a history of all the transactional
11 volume for a particular dealer, as a dealer with DSC
12 and NextGear.

13 Q And it would be similar to what was Exhibit B to your
14 affidavit?

15 A Correct. That's where -- this report was created
16 using that data.

17 MR. AIREY: I'm sorry. I'm trying to narrow this
18 down for you. It's good I'm pausing. We've gone
19 over some of this.

20 Actually, if we could take a five-minute break.

21 (A recess was taken.)

22 Q With the affidavit that you drafted, on page 3, at
23 paragraphs 24, 25, and 26 -- well, let's go 24 and
24 25. You say many dealers in the proposed class
25 defaulted on their obligations to NextGear, correct?

1 A Correct.

2 Q And you know that from a review of the records at
3 NextGear?

4 A Correct.

5 Q And there's also many dealers that have defaulted on
6 their obligations as well, too?

7 A Correct.

8 Q And you know that from looking at NextGear's records?

9 A Correct.

10 Q Did you do a generalized search of NextGear's records
11 to prepare this affidavit?

12 A Personally, no. I relied on other information
13 provided.

14 Q Who provided that information to you?

15 A I can't say exactly who.

16 Q You don't remember, or is it because it was an
17 attorney that provided it to you?

18 A Yeah, I don't know who actually pulled the
19 information.

20 Q Did you review any documents to determine whether the
21 dealers defaulted -- many dealers defaulted?

22 A I know it to be true because I'm heavily involved
23 with that -- with the data presented inside of our
24 system regarding that and am familiar with the
25 dealers who defaulted and, ultimately, are charged

1 off.

2 Q On a global level, because of the reporting that you
3 do, that's how you're familiar with those?

4 A Sure. But I'm familiar with the -- some of the
5 dealers themselves.

6 Q Are you familiar with all the dealers that default?
7 I mean, is that something that you look at, each
8 individual account when there's a default?

9 A I do not review each individual account and determine
10 a default needs to occur or has occurred. But I do
11 see a list, both a detailed list and, obviously,
12 summary information too, that details all that
13 information.

14 Q And that's something that's reported to you in the
15 ordinary course of your job?

16 A Correct.

17 Q How is that reported to you? Is that an e-mail that
18 you get or a company memo?

19 A Today we receive an e-mail every morning that details
20 dealers who have defaulted.

21 Q And have you always had some interaction with the
22 dealers that have defaulted, in all your previous
23 positions at NextGear?

24 A I would say I became more involved as controller.

25 Q When you were controller, how would you get notified

1 of a dealer default?

2 A I can't recall.

3 Q Would it be in writing, though, generally, that you
4 would have been notified, with a list of dealers?

5 A I can't recall.

6 Q Do you have any role in any legal process that
7 NextGear files against any dealer that has defaulted?

8 A Potentially. It's not a standard practice for me to
9 be involved in that.

10 Q So other than the one case that we talked about
11 earlier, where you testified in, do you routinely
12 prepare affidavits for any defaults or legal process?

13 A Yeah. I'll be asked -- either myself or my team will
14 be asked for information surrounding certain
15 defaults. Again, it's not a checkbox, you know,
16 every single default is coming through us.

17 Q You said not every single default comes through you?

18 A Correct. I mean, I have no -- I cannot determine a
19 default. And I'm also not necessarily providing
20 information, financial information, related to every
21 single default. A lot of that resides in our system.

22 Q Do you perform an analysis to find out why somebody's
23 defaulted on a loan?

24 A I do not.

25 Q Do you know who does?

1 A Yeah. That would be our risk department.

2 Q Do you review that information on why someone's
3 defaulted, or is it more you just log in the
4 information once one has happened?

5 A That information is available to me if I would like
6 to review it. Again, I don't need to. I'm not the
7 one that's actually defaulting that account.

8 Q So you wouldn't routinely look at that information?

9 A No.

10 Q Did you look at that information for this litigation?

11 A Yes, I'm familiar with some of the details around it.

12 Q The details for why dealers in the proposed class
13 would have defaulted or just these particular dealers
14 that are named?

15 A Just the named dealers.

16 Q Now, as far as any contracts that NextGear or DSC
17 would have had with or has with the auctions
18 themselves, do you have any role in negotiating those
19 contracts?

20 A No, I do not.

21 Q Do you review those contracts?

22 A Today, sometimes I'm asked to sign them as
23 representative of NextGear.

24 Q And that's in your job that you have now since 2015?

25 A Correct.

1 Q Prior to 2015 would you have reviewed those --

2 A No.

3 Q -- contracts?

4 A No, I would not.

5 Q And you also wouldn't have had any role in signing a
6 particular individual dealer up to a particular
7 contract with NextGear?

8 A No.

9 Q Are you familiar with the Auction Insurance Agency?

10 A Yes.

11 Q What's your role in dealing with Auction Insurance
12 Agency on behalf of NextGear?

13 A I do not have a direct role.

14 MR. VINK: I was going to say for what time
15 frame?

16 Q How about for any time that you've worked at
17 NextGear.

18 A For any time I've not had a direct role with them.

19 Q So you don't report dealers to Auction Insurance
20 Agency?

21 A I do not.

22 Q Did you supervise the people that did?

23 A No, I did not.

24 Q With Auction Insurance Agency, there's several
25 paragraphs in your affidavit that you discuss that.

1 Have you become familiar with that in the course
2 of -- or with that agency or reporting process during
3 the course of this litigation?

4 A With Auction Insurance Agency?

5 Q Yes.

6 A No. I have had general knowledge of that
7 relationship for -- throughout the course of my
8 employment.

9 Q So you have some general knowledge of what Auction
10 Insurance Agency does. But as far as your role in
11 NextGear, you don't interact with them?

12 A That's correct. I'm aware of the relationship and
13 mutual benefit but not -- I do not have direct
14 involvement there.

15 Q Do you know who does have direct involvement with
16 them?

17 A It's my understanding the risk department does.

18 Q Do you know a Mr. John Fuller that may have worked at
19 NextGear?

20 A Yes.

21 Q Do you know where he is now?

22 A I do not.

23 Q Do you know when he left?

24 A He left after the acquisition.

25 Q Close in time to the acquisition or --

1 A Yes.

2 Q Do you have any role in setting salaries or bonuses
3 for the sales representatives?

4 A No, I do not.

5 Q Who would have a role at the company doing that?

6 A Well, their hiring manager would determine what their
7 salary is, through, you know, cooperation with our HR
8 department.

9 Q That's outside your scope of what you do at NextGear,
10 though?

11 A The salary piece, yeah. I mean, incentives, bonus
12 plans do fall under my responsibilities.

13 Q When you say it falls within your responsibilities,
14 do you have a role in setting what the salaries -- or
15 how bonuses or incentive plans for employees are --

16 A I have a collaborative role, I guess you'd say. I do
17 not set the bonus plan. I am asked for input and
18 guidance as those are developed.

19 Q What kind of input do you give?

20 A Just related to the data that they want to measure,
21 the actual dollar amounts that are proposed for that
22 bonus plan.

23 Q You mean on a companywide basis or for an individual?
24 Like, creating a pool of money for the sales
25 representatives, or is it on an individual basis?

1 A Yeah. No, just on an individual basis, like what
2 would be an appropriate amount to incentivize
3 someone.

4 Q And you do that for all the sales representatives?

5 A Yeah. Every incentive plan runs through finance.

6 Q Do you have any input in what the goals are that a
7 salesperson needs to reach in order to earn a bonus?

8 A No, I do not. Those are set by their -- the
9 operational folks.

10 Q Do you have any input in the metrics that may be used
11 to determine a particular goal or particular amount
12 of money that an individual sales representative
13 would get?

14 A Sure. My team is responsible for calculating the
15 incentive, so we use the data that comes out of our
16 system and calculate the incentive from that.

17 Q What data would you use?

18 A During that time frame? During this time frame here?
19 I can't recall exactly what would have been part of
20 the incentive plans. You know, guessing, it probably
21 would have been something revolving around
22 activations and -- you know, dealer activations and
23 new loan count.

24 Q And have those metrics changed over time?

25 A Sure.

1 Q What changes were made?

2 A They change every year. So I couldn't tell you
3 exactly each year what changes, but different metrics
4 are used each year.

5 Q Is it generally based on the dealer activation and
6 maybe default rate as well, too? Would those be
7 terms that were normally included?

8 A Sure. Potentially, yeah. It's generally based
9 around the activity that account executive manages
10 and that their portfolio generates.

11 Q With the merger purchase by Cox, did you have any
12 role in negotiating that merger?

13 A No, I did not.

14 Q Did you have any role in the integration of MAFS with
15 NextGear?

16 A Yes.

17 Q What did you do with that?

18 A Just assisted with the combination of financial
19 statements, the combination of the securitization
20 facilities for both companies. Just, you know, a
21 whole litany of those things. Those are the main
22 overarching themes there.

23 Q You would have been in charge of integrating any
24 salesperson training, anything like that, with --

25 A No, I do not train the salespeople.